

REMARKS

The foregoing amendment corrects the antecedent basis of Claim 5 and removes the word "approximately" from Claims 14 and 18 as required by the Examiner. Applicant respectfully submits these amendments correct the language of those respective claims objected to by the Examiner.

Claim 15, rejected under 35 U.S.C. § 112, second paragraph, is amended as shown in the foregoing amendment and Applicant respectfully submits that there is no longer a conflict of the limitations of Claim 15 with the limitations of parent Claim 1.

Claims 1-3, 6-11, 33 and 34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,695,186 issued to *King* in view of U.S. Patent No. 5,960,710, issued to *Holtom*. Applicant respectfully traverses the rejection of the aforementioned claims under the combination of these references as follows.

The present application for patent states in the paragraph at the beginning of the specification (see page 2, lines 4-5) that the present invention relates particularly to "safety door systems for hopper containers as may be used in such applications as pavement construction or repair or in agricultural uses." It is readily apparent to persons familiar with this type of equipment that the lack of operable safety systems is a serious deficiency. It is also readily apparent that safety systems which are inoperable can be more dangerous than no safety system at all because reliance upon a safety system may foster relaxed attention to safety and result in serious injury to personnel relying upon a safety system that is inoperable.

The *King* reference is presented in the Detailed Action as disclosing a "hopper (13) having a powered dispensing implement (63), hinged door (31, 32) and hydraulic actuating cylinder (44) arranged as claimed," in Applicant's independent Claim 1. Applicant respectfully points out that having structures that appear similar in some respect may not necessarily adequately disclose the elements as claimed in the combination recited in Applicant's Claim 1. For example, the piston/cylinder

combinations (44) shown in Figure 2 of *King* appears inoperable to fully close the bi-fold doors because the rod portion of the actuating cylinder is not effective to position the bi-fold doors (31, 32) in a fully closed position due to the inadequately short overall length of the actuating cylinder and its extension rod as shown in Figure 2 of *King*. Moreover, the disclosure in *King* of the operation of the piston/cylinder combination (44) is limited to "the bi-fold doors preferably are activated by piston/cylinder combinations 44 that are located within the trough section as shown in Figure 2." Column 3, lines 35-37. Thus, the function of the piston/cylinder combinations (44) does not appear to include closing the doors but merely activating the doors.

Further, this limited disclosure of *King* discussed in the preceding paragraph does not contain everything recited in Applicant's Claim 1 regarding the third element, which is "a hydraulic actuating cylinder coupled between a second edge of the safety door and a corresponding second side of the hopper body and operative to open the safety door when the hydraulic actuating cylinder extends its length and to close the safety door when the hydraulic actuating cylinder retracts its length." For these reasons Applicant respectfully submits that the *King* reference fails to fully satisfy the requirements of a primary reference for use in a rejection brought under 35 U.S.C. § 103(a).

It is correctly stated in the present Office Action on page 3 in the second paragraph that "the interlock device/control system is not disclosed in the *King* reference." Thus, the *Holtom* reference is presented in the Detailed Action as teaching "a hydraulic actuating cylinder (18), door (12) and hopper (11) with an interlock/control system arranged as claimed" in Applicant's Claim 1 in the last clause.

Applicant respectfully submits that there are a number of difficulties with this particular combination of references because the *Holtom* reference is deficient as follows. First, there is no teaching in either *King* or *Holtom* to combine the one with the other. The *King* reference does not disclose the need for a safety interlock system which operates in conjunction with the opening and closing of the hopper doors. Further, the *Holtom* reference does not suggest the combination of a hydraulic actuating cylinder and a proximity switch as being suitable for implementing a safety interlock for

a hopper body. A hopper body, configured with inwardly sloping sides for holding fungible material in position to be distributed from a lower portion thereof by a conveyor system, which transports the material in the hopper in a controlled manner and exports the material for use, is to be distinguished from the compactor of *Holtom*. In *Holtom*, the compactor includes a container with a lid, which container further includes a movable, internal, compacting lid-like structure that functions to enclose the contents therein until it can be dumped by up-ending the container. Clearly, these two structures - the hopper body of *King* and the refuse container of *Holtom* - are dissimilar because they are directed to different purposes. It is well known that to combine one prior art reference with another there must be some motivation in the references to combine the one with the other. To use the Applicant's claim as a template for suggesting such combination is an improper basis for a rejection under 35 U.S.C. § 103(a) as is also well settled.

Second, further evidence of the lack of suggestion in either reference to combine the one with the other is apparent from realizing that the refuse compactor or *Holtom* is fundamentally different from the asphalt handling apparatus of *King* in another way, because (a) the compactor is a device for storing and compacting loose waste materials, not hot asphalt or other fungible materials; and (b) the compaction blade of *Holtom*, which is structurally a movable, internal lid-like device, is clearly not a screw conveyor. Therefore, the potential hazards presented by each of the prior art references are quite different and it is likely that an inventor having one of the references in front of him would think of or seek to consult the other reference for teaching the combination as recited in Applicant's Claim 1.

Third, the *Holtom* reference contains insufficient disclosure of the mechanism for implementing the feature that is alleged to teach the same safety interlock as recited in Applicant's Claim 1. *Holtom* neither teaches the same structure (the locking bar 23 of *Holtom* is clearly not the same sort of structure as a hydraulic actuating cylinder), and the operation or functioning of the locking bar 23 of *Holtom* is insufficiently described so that one skilled in the art would understand how it cooperates with the proximity switch 24 to provide the alleged interlock feature when the compactor lid approaches or enters a closed position. Neither Figures 2, 3, or 6, which illustrate the locking

bar 23, convey any information about how the locking bar 23 is utilized when the door 12 of *Holtom* enters into or is moved away from a closed position. Moreover, there is no disclosure in column 2, lines 56-60, or elsewhere in *Holtom*, of how the locking bar 23 "engages" the proximity switches 24 to complete an (undisclosed) electrical circuit. Thus, the *Holtom* reference is defective in that fails to disclose how the so called interlock means is structured, what the relationship of the necessary elements of the structure is, and how the elements function together to accomplish an operable interlock means.

Fourth, it is readily apparent from the foregoing that *Holtom* does not fully solve the problem of providing a fully functioning safety interlock for the hopper doors on a hopper body.

Fifth, it is also readily apparent that, in the face of a long-sought need (cited references to *King* and *Holtom* pre-date Applicant's filing date by 16 and 4 years, respectively) if the combination recited in Applicant's Claim 1 is obvious, then there would surely be a single reference that would anticipate Applicant's invention or, in the alternative, a combination of references which teach the combination as claimed in Applicant's Claim 1 and contain the motivation to make such a combination.

For the foregoing reasons, Applicant respectfully submits that the requirements of rejection for obviousness under 35 U.S.C. § 103(a) and have not been met and respectfully requests the withdrawal of this rejection of Claim 1. Moreover, since all the remaining claims pending in the present application, that is Claims 2-18 and 33 and 34, are dependent upon the base Claim 1, all of these dependent claims contain the same limitations as recited in Claim 1, which Applicant respectfully submits has been shown herein above to be allowable over the cited prior art. These dependent claims would therefore likewise be allowable over the cited prior art. Applicant therefore respectfully requests the withdrawal of the rejection of the dependent Claims 2, 3, 6-11 and 33 and 34 as being unpatentable over the combination of the *King* and *Holtom* references.

Claims 4 and 5 are rejected in the present Office Action as being unpatentable over *King* and *Holtom* as previously applied and further in view of U.S. Patent No. 5,988,935, to *Dillingham*. Claims 4 and 5 depend respectively from Claims 1 and 3, and thus contain all of the limitations thereof. However, Claims 4 and 5 are allowable because Claims 1 and 3 have been shown to be patentable over the cited configurations of prior art references, notwithstanding the disclosures in *Dillingham*. Applicant respectfully requests the withdrawal of the rejection of Claims 4 and 5.

An Office Action was mailed in the present case on August 5, 2005, making a response due on or before November 5, 2005. Since this response is being submitted in a timely manner, no additional fee is thought to be due at this time. If any additional fee is due for the continued prosecution of this application, please charge the same to Applicant's Deposit Account No. 50-2555 (Whitaker, Chalk, Swindle & Sawyer, LLP).

Respectfully submitted,



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